November 17, 2003

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: Boston Gas Company d/b/a KeySpan Energy Delivery New England, D.T.E 03– 40

Dear Secretary Cottrell:

The Attorney General opposes the Motion For Recalculation Or In The Alternative For Reconsideration filed on Boston Gas d/b/a KeySpan Energy Delivery New England ("Company" or "KeySpan") on November 7, 2003 with the Department of Telecommunications and Energy ("Department"). The motion asks that the Department to reverse its findings in its rate case Order that reduced the Company's revenue requirement by capitalizing a certain amount of incentive mechanism costs. Motion, pp. 5-10. The Company in its petition moves for "recalculation" of the part of the October 31, 2003 Order in which the Department directed the Company to expense 66.3 percent of its incentive compensation adjustment, since it found that a portion of the incentive compensation should be capitalized.[1] Order, p. 128. The Company's motion should be denied for two reasons.

First, the Company's motion is actually a request for the Department to change its analysis, and reverse its findings and directives. Such a request goes well beyond a motion for recalculation that merely seeks change where there is a computational error or if the schedules in the Order are inconsistent with the findings and conclusions contained in the body of the order. This motion is rather a request for reconsideration that must be treated under the Department's standards for reconsideration. A motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. *Massachusetts*

[1] Department Procedural Rules allow a party to file a motion for recalculation based on an alleged inadvertent error in a calculation contained in a final Department Order. 220 C.M.R. § 1.11(9). The Department grants motions for recalculation in instances where an order contains a computational error or if schedules in the order are inconsistent with the findings and conclusions contained in the text of the order. *Western Massachusetts Electric Company*, D.P.U. 89-255-A at 4 (1990); *Essex County Gas Company*, D.P.U. 87-59-A at 1-2(1988).

Electric Company, D.P.U. 90-261-B, p. 7 (1991). The Department also may grant reconsideration of previously decided issues when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. *North Attleboro Gas Company*, D.P.U. 94-130-B, p. 2 (1995); *Boston Edison Company*, D.P.U. 90-270-A, pp. 2-3 (1991). A party should not use a motion for reconsideration, however, as a vehicle to reargue issues already decided in the main case. *Commonwealth Electric Company*, D.P.U. 92-C-1A, pp. 3-6 (1995). *Fitchburg Gas & Electric Light Company*, D.T.E. 98-51-A, p. 5 (1999); *Western Massachusetts Electric Company*, D.P.U. 89-255-A, p. 4, (1990); and *Essex County Gas Company*, D.P.U. 87-59-A, pp. 1-2 (1988).

Second, the Company's analysis in its motion fails to provide any proof that the Company, in fact, capitalized any of its pro forma incentive payments during the test year in this case. To the contrary, the analysis shows that the Company did not capitalize any of its proposed incentive payments. Although the Company may have capitalized a portion of the test year incentive compensation,[2] it is clear from the record that the Company did not capitalize a portion of its Incentive Compensation Adjustments. *See* Exhibit KEDNE/PJM-2, p. 8, lines 8-9; Exhibit KEDNE/PJM-2 (Supplemental), pp. 45, 46 (page 45 indicates that the amounts used in the adjustments are "Complete 2002 Budgeted Payout" and page 46 notes that the amounts are "Incentive Comp Budget 2002" without any disaggregation into expense and capitalized amounts); Exh. AG-6-21 (showing a "Grand Total" of the "2002 Incentive Compensation at Target Level" of $1,111,874.71). Furthermore, while the Company claims that the Service Company adjustment represents expense amounts that were "capitalized at the service company" level, there is no showing that the Service Company capitalized any of the Incentive Compensation. It would be unusual for the Service Company to capitalize the distribution company's overhead costs at the service company level rather than at the distribution company level where these costs could be included in plant in service. *Id.*, p. 36 (showing "2002 Target Gain Sharing and Incentive Compensation"). Finally, the Company incorrectly claims that its treatment of the Severance Adjustment on Exhibit KEDNE/PJM-2, page 19 provides some evidence for the appropriate treatment of the Incentive Compensation Adjustment. With the Severance Adjustment, however, the Company simply removes the entire amount from the cost of service since that amount was already included in the operations and maintenance expenses during the test year. It is not necessary to determine whether the Company capitalized any portion of the Severance Adjustment. Motion, p. 6.

[2] There is no showing anywhere in the record that there was, in fact, an amount capitalized, and for that matter, how much.

Given the Department's original findings on the issue of capitalizing incentive compensation, the Company has offered no convincing argument that there was a calculation error or, if the Department views the motion as motion for reconsideration, that part of the Order should be reversed. There is no evidence that the Department's treatment of the issue was a product of inadvertence or mistake, or that extraordinary circumstances merit a second look. Consequently, the motion should be denied.

Sincerely,

Alexander J. Cochis
Assistant Attorney General

cc. Service list